

Supreme Court of Judicature (Ireland) Bill. [H.L.]

ARRANGEMENT OF CLAUSES.

Preliminary.

CLAUSES.

1. Short title.
 2. Commencement of Act.
 3. Interpretation of terms.
-

PART I.

Constitution and Judges of Court of Judicature.

4. Union of existing Courts into one Court of Judicature.
5. Division of Court of Judicature into a Court of original and a Court of appellate jurisdiction.
6. Constitution of High Court of Justice in Ireland.
7. As to Judges of Landed Estates Court.
8. As to Judges of Court of Bankruptcy.
9. Existing Judge of Admiralty.
10. Constitution of Court of Appeal.
11. Vacancies by resignation of Judges and effect of vacancies generally.
12. Qualifications of Judges.
13. Tenure of office of Judges, and oaths of office.
14. Precedence of Judges.
15. Saving of rights and obligations of existing Judges.
16. Provisions for extraordinary duties of Judges of the former Courts.

CLAUSE A.—Salaries of certain existing Judges.

CLAUSE B.—Salaries of future Judges.

CLAUSE C.—Retiring pensions of future Judges of High Court of Justice, and ordinary Judges of Court of Appeal.

CLAUSE D.—Salaries and pensions how to be paid.

PART II.

Jurisdiction and Law.

Classes.

17. Jurisdiction of High Court of Justice.
18. Jurisdiction not transferred to High Court.
19. Jurisdiction transferred to Court of Appeal.
20. Appeals from High Court.
21. Transfer of pending business.
22. Rules as to exercise of jurisdiction.
23. Law and equity to be concurrently administered.
24. Rules of law upon certain points. Administration of assets of insolvent estates. Statutes of Limitation inapplicable to express trusts. Equitable waste. Merger. Suits for possession of land by mortgagors. Assignment of debts and choses in action. Stipulations not of the essence of contracts. Injunctions and receivers. Damages by collisions at sea. Infants. Cases of conflict not enumerated.

PART III.

Sittings and Distribution of Business.

25. Abolition of terms.
26. Vacation.
27. Sittings in vacation.
28. Jurisdiction of Judges of High Court on Circuit.
29. Sittings for trial by jury in Dublin.
30. Divisions of the High Court of Justice.
31. Existing Judge of the Court of Probate.
32. Provisions as to testamentary and matrimonial business.
33. New provisions to take effect on the reduction of Judges in Exchequer Division to number of three.
34. Rules of Court to provide for distribution of business.
35. Assignment of certain business to particular Divisions of High Court, subject to Rules.
36. Provision as to option for any Plaintiff (subject to Rules) to choose in what Division he will sue.
37. Power of transfer.
38. Directions as to procedure in Landed Estates Court.
39. Sittings in Dublin and on Circuits.

Clases.

40. Rota of Judges for election petitions.
41. Powers of one or more Judges not constituting a Divisional Court.
42. Divisional Courts of the High Court of Justice.
43. Divisional Courts for business of Queen's Bench, Common Pleas, and Exchequer Divisions.
44. Distribution of business among the Judges of the Chancery and Probate Divisions of the High Court.
45. Cases and points may be reserved for or directed to be argued before Divisional Courts or Courts of Appeal.
46. Provision for Crown cases reserved.
47. Motions for new trials to be heard by Divisional Courts.
48. What orders shall not be subject to appeal.
49. As to discharging orders made in Chambers.
50. Provision for absence or vacancy in the office of a Judge.
51. Power of a single Judge in Court of Appeal.
52. Constitution of Court of Appeal when hearing Appeals.
53. Arrangements for business of Court of Appeal.

PART IV.

Trial and Procedure.

54. References and assessors.
55. Power to direct trials before Referees.
56. Power of Referees and effect of their findings.
57. Powers of Court with respect to proceedings before Referees.
58. Lord Lieutenant may establish District Registries in the country.
59. Seals of District Registries.
60. Powers of District Registrars.
61. Proceedings to be taken in District Registries.
62. Power for Court to remove proceedings from District Registries.
63. Accounts and inquiries may be referred to District Registrars.
64. 33 & 34 Vict. c. 109, ss. 5 and 6 to extend to actions in High Court.
65. Provision as to making of Rules of Court before or after the commencement of the Act.

[161.]

Classes.

66. Rules of Courts of Probate and for Matrimonial Causes to be Rules of the High Court.
67. Criminal procedure, subject to future Rules, to remain unaltered.
68. Act not to affect rules of evidence.
69. Saving of existing procedure of Courts when not inconsistent with this Act or Rules.
70. Additional power as to regulation of practice and procedure by Rules of Court.
71. Orders and Rules to be laid before Parliament, and may be annulled on address from either House.
72. Councils of Judges to consider procedure and administration of justice.
73. Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

PART V.*Officers and Offices.*

74. Transfer of existing staff of officers to Court of Judicature.
 75. Appointment of future officers of Supreme Court.
 76. Powers of Commissioners to administer oaths.
 77. Receiver Master.
- CLAUSE E.—Salaries and pensions of officers.
78. Clerks of Assize and Nisi Prius.
 79. Solicitors and attorneys.

PART VI.*Jurisdiction of Inferior Courts.*

80. Rules of law to apply to inferior Courts.

PART VII.*Miscellaneous Provisions.*

81. Transfer of books and papers to Court of Judicature.
 82. Saving as to circuits, &c.
 83. Saving as to Lord Chancellor.
 84. Provisions as to Great Seal being in commission.
-

PART VIII.

Classes.

CLAUSE F.—Fixing and collection of fees in High Court and Court of Appeal.

PART IX.

Unclaimed Dividends in Bankruptcy.

CLAUSE G.—Amendment of the Irish Bankrupt and Insolvent Act, 1857, with respect to the unclaimed dividend account.

PART X.

Final Appeal.

85. Final appeal to House of Lords.

A

B I L L

INTITLED

An Act for the constitution of a Supreme Court of Judicature, A.D. 1876.
and for other purposes relating to the better Administration
of Justice, in Ireland.

[*Note.—The words and clauses printed in red ink are proposed to be inserted in Committes.*]

WHERRAS it is expedient to constitute a Supreme Court of Judicature, and to make provision for the better administration of justice, in Ireland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act (Ireland), 1876." Short title.

2. This Act, except where otherwise expressly provided, shall commence and come into operation on the first day of January one thousand eight hundred and seventy-seven. Commencement of Act.

3. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several expressions herein-after mentioned shall have, or include, the meanings following; (that is to say.) Interpretation of terms.

"High Court of Chancery" and "Court of Chancery" respectively shall mean the High Court of Chancery in Ireland, and shall include the Lord Chancellor.

"Court of Queen's Bench" shall mean the Court of Queen's Bench in Ireland.

"Court of Common Pleas" shall mean the Court of Common Pleas in Ireland.

"Court of Exchequer" shall mean the Court of Exchequer in Ireland.

"High Court of Admiralty" shall mean the High Court of Admiralty of Ireland.

"Court of Probate" shall mean the Court of Probate in Ireland.

[Bill 161.]

A

A.D. 1874.

- "Court for Matrimonial Causes and Matters" shall mean the Court for Matrimonial Causes and Matters in Ireland.
- "Landed Estates Court" shall mean the Landed Estates Court, Ireland.
- "Court of Bankruptcy" shall mean the Court of Bankruptcy in Ireland.
- "Lord Lieutenant" shall mean the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being.
- "Lord Chancellor" shall mean Lord Chancellor of Ireland, and shall include Lords Commissioners and Lord Keeper of the Great Seal of Ireland.
- "The Lord Chief Justice" shall mean the Lord Chief Justice of Ireland.
- "Master of the Rolls" shall mean the Master of the Rolls in Ireland.
- "Lord Justice of Appeal" shall mean the Lord Justice of Appeal in Chancery in Ireland.
- "Vice-Chancellor" shall mean the Vice-Chancellor of Ireland.
- "High Court of Justice" shall mean Her Majesty's Court of Justice in Ireland established by this Act.
- "Court of Appeal" shall mean Her Majesty's Court of Appeal in Ireland established by this Act.
- "The Treasury" shall mean the Commissioners of Her Majesty's Treasury for the time being, or any two of them.
- "Rules of Court" shall include forms.
- "Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.
- "Suit" shall include action.
- "Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and shall not include a criminal proceeding by or in the name of the Crown.
- "Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.
- "Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.
- "Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the Record. A.D. 1876.

"Matter" shall include every proceeding in the Court not in a cause.

5 "Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

10 "Judgment" shall include decree.

"Order" shall include rule.

"Oath" shall include solemn affirmation and statutory declaration.

15 "Crown cases reserved" shall mean such questions of law reserved in Criminal Trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty's reign, chapter seventy-eight.

"Pension" shall include retirement and superannuation allowance.

20 "Existing" shall mean existing at the time appointed for the commencement of this Act.

25 "Registration of Voters Acts" shall mean the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-nine, and all other Acts or parts of Acts relating to the registration or qualification of persons entitled to vote at the election of members to serve in Parliament for Ireland.

30 "Land" shall have the same meaning as in the Act of the session of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter seventy-two, intitled

"An Act to facilitate the sale and transfer of land in Ireland."

"Officers" shall include "clerks."

PART I.

Constitution and Judges of Court of Judicature.

35 4. From and after the time appointed for the commencement of this Act, the several Courts herein-after mentioned, (that is to say,) The High Court of Chancery, the Court of Queen's Bench, the Court of Common Pleas, the Court of Exchequer, the Court of Probate, the Court for Matrimonial Causes and Matters, and the

Union of existing Courts into one Court of Judicature.

A.D. 1876. — Landed Estates Court, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in Ireland.

Division of
Court of Ju-
dicature into
a Court of
original and
a Court
of appellate
jurisdiction.

5. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice in Ireland," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal in Ireland," shall have and exercise appellate jurisdiction, with such original jurisdiction as herein-after 10 mentioned as may be incident to the determination of any appeal.

Constitution
of High
Court of
Justice in
Ireland.

6. Her Majesty's High Court of Justice in Ireland shall be constituted as follows:—The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord 15 Chief Baron of the Exchequer, the Vice-Chancellor, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, the Judge of the Court of Probate and of the Court for Matrimonial Causes and Matters, and the Judges of the 20 Landed Estates Court, except such, if any, of the aforesaid Judges as shall be appointed an ordinary Judge of the Court of Appeal.

The Lord Chancellor shall be appointed and shall hold his office in the same manner as heretofore.

Whenever the office of a Judge of the said High Court, other 25 than the Lord Chancellor, shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent.

All persons to be hereafter appointed to fill the places of the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their suc- 30 cessors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every Judge, other than the Lord Chancellor and the Judges last-mentioned, who shall be appointed to fill the place of any Judge 35 of the High Court of Justice, shall be styled in his appointment "Judge of Her Majesty's High Court of Justice in Ireland."

Any vacancy which may exist at the time of the commencement of this Act, or the first vacancy which shall occur next after the commencement of this Act, in any one of the offices of the Puisne 40 Justices of the Common Pleas or of the Junior Barons of the

Exchequer respectively, shall not be filled by the appointment of any new Judge, save by virtue of the provisions in that behalf herein-after contained. A.D. 1876.

Provided always, that when first after the commencement of this Act one of the existing Judges of the Landed Estates Court shall die, resign, or otherwise vacate his office, the vacancy thus occasioned shall not be filled up until a Commission shall have been issued by Her Majesty under her Royal Sign Manual to ascertain and report whether the business in connexion with the Division of the High Court of Justice (herein-after termed the Chancery Division) makes it requisite that such appointment should be made, nor until the expiration of a period of forty days after the date of such report, if Parliament be then sitting, and if Parliament be not then sitting, until the expiration of a period of forty days after the commencement of the then next Session of Parliament.

All the Judges of the said Court shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law in Ireland, and shall have in all respects, save as in this Act otherwise expressly provided, equal power, authority, and jurisdiction.

The Lord Chancellor for the time being, or in his absence the Lord Chief Justice for the time being, shall be President of the High Court of Justice.

7. The jurisdiction exercised by the Judges of the Landed Estates Court shall continue to be exercised by them, and by the Judges who may from time to time be appointed to succeed them, and, except in the case of illness, absence, or other inability of them or either of them to discharge their duties, or of a vacancy in the office of the said Judges or either of them, not by any other Judge of the High Court. As to Judges
of Landed
Estates
Court.

If the state of business, in connexion with their peculiar jurisdiction shall permit, the said Judges shall in addition be bound from time to time to assist in the general business of the Chancery Division.

The existing Judges of the Landed Estates Court and their successors shall be Judges of the Division of the High Court of Justice in this Act termed the Chancery Division, and shall be distinguished as the Land Judges of the said Division. The rules and orders and practice of the Landed Estates Court shall continue to be used in proceedings for the sale or partition of estates, declaration or record of titles, and all other proceedings which would have been within the exclusive cognizance of the Landed Estates Court if this Act had not passed, before the Land Judges, unless and until altered by the Lord Chancellor and the said Judges.

A.D. 1876.

There shall be a separate seal for the Land Judges, and conveyances executed with this seal shall have the same force as those executed with the seal of the Landed Estates Court.

As to Judges
of Court of
Bankruptcy.

8. Subject to the powers herein-after contained in reference to the Court of Bankruptcy and to any exercise of the same, the existing 5 Judges of the said Court and their successors in such offices respectively, who shall be appointed in the same manner as heretofore, shall, as to tenure of office, rank, title, patronage, rights, privileges, and powers of appointment and dismissal, salary, pension, jurisdiction, powers, and authority respectively, remain and be in 10 the same condition and be liable to discharge the same duties respectively, and none other, as if this Act had not been passed.

The practice and procedure of the Court of Bankruptcy, and the powers to make rules and orders regulating the same, shall continue and be exercised in the same manner as if this Act had not been 15 passed. The tenure, salaries, pensions, rights, privileges, and duties of the officers of the said Court shall also continue the same as if this Act had not been passed.

Appeals from orders of the Judges of the said Court shall lie to the Court of Appeal constituted by this Act, in the same manner 20 and in respect of the same proceedings as heretofore to the Court of Appeal in Chancery.

Existing
Judge of
Admiralty.

9. The existing Judge of the High Court of Admiralty shall retain the same jurisdiction, authority, rights of patronage, and of dismissal, rank and salary as if this Act had not been passed. 25

Appeals from his orders and decrees shall lie to the Court of Appeal constituted by this Act in the same manner and in respect of the same proceedings as heretofore to the Court of Appeal in Chancery.

When the existing Judge of the High Court of Admiralty shall die, resign, or otherwise vacate his office, no person shall be 30 appointed to succeed him in his said office, and thereupon the High Court of Admiralty in Ireland shall be united and consolidated with the Supreme Court of Judicature in Ireland, and all the jurisdiction vested in and capable of being exercised by the Judge of the said Court of Admiralty, and all causes and proceedings 35 then pending in the said Court, shall be transferred to the High Court of Justice. The Lord Lieutenant, by and with the advice of the Privy Council in Ireland, shall then by order declare to which of the Divisions of the High Court of Justice Admiralty causes and business, whether then pending or subsequently com- 40 menced, shall be assigned; and thereupon Rules of Court shall be made by the Lord Chancellor and the Judges of such Division, or any two of such Judges, to regulate the practice and procedure in Admiralty, and to determine in what manner Admiralty causes

and business shall be assigned to one or more Judges of such Division, and to define and fix the offices of the Court of Admiralty to be continued, and by what officers of the said Court or of the Division to which Admiralty jurisdiction is assigned Admiralty business is to be carried on. Until such transfer of jurisdiction to the High Court of Justice as aforesaid the Lord Chancellor, with the concurrence of the Treasury, shall, on vacancy in the offices of the Admiralty Court, make provision for the temporary discharge of the duties of such officers.

A.D. 1876.

- 10 It shall be lawful for the Lord Lieutenant, with the consent of the Lord Chancellor and the concurrence of the Treasury, to release the existing Judge of the Court of Admiralty from the further discharge of his duties, but without prejudice to his right to continue to receive his salary; and thereupon the several provisions herein-before expressed to take effect on resignation or other vacancy of his office shall come into operation.

10. Her Majesty's Court of Appeal in Ireland shall be constituted as follows: There shall be four ex officio Judges thereof, and two ordinary Judges, who shall from time to time be appointed by Her Majesty. The ex-officio Judges shall be the Lord Chancellor, the Lord Chief Justice, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer. The first ordinary Judges of the said Court shall be the existing Lord Justice of Appeal in Chancery, and such other person as Her Majesty may be pleased to appoint by Letters Patent; such appointment may be made either before or after the commencement of this Act, and if made before shall take effect from the commencement of this Act.

Constitution of Court of Appeal.

- Besides the said ex officio Judges and ordinary Judges, it shall be lawful for Her Majesty (if she shall think fit) to appoint under Her Royal Sign Manual as additional Judges of the Court of Appeal any persons who, having held the office of Lord Chancellor or of Chief Justice, Chief Justice of the Common Pleas, or Chief Baron of the Exchequer in Ireland, shall signify in writing their willingness to serve as such additional Judges.

- 35 The ordinary and additional Judges of the Court of Appeal shall be styled Lords Justices of Appeal. All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction.

- Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant, a new Judge may be appointed thereto by Her Majesty by Letters Patent.

The Lord Chancellor for the time being shall be President of the Court of Appeal.

11. The office of any Judge of the Court of Appeal or of any Judge of the High Court of Justice may be vacated by resignation

Vacancies by resignation of Judges

A.D. 1878.

and effect of
vacancies
generally.

in writing, under his hand, addressed to the Lord Lieutenant, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed to the office of ordinary Judge of the Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge.

Qualifica-
tions of
Judges.

12. Any person who has practised for not less than ten years at the Bar of Ireland shall be qualified to be appointed a Judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed Lord Justice of the Court of Appeal in Chancery in Ireland, or has been a Judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed to the office of ordinary Judge of the said Court of Appeal.

Tenure of
office of
Judges, and
oaths of
office.

13. Every Judge of the High Court of Justice other than the Lord Chancellor, and every ordinary Judge of the Court of Appeal, shall hold his office for life, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every Judge of either of the said Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

Precedence
of Judges.

14. The *ex officio* Judges of the Court of Appeal shall rank in the Supreme Court of Judicature in Ireland in the order of their present respective official precedences. The ordinary Judges of the Court of Appeal shall rank in the said Court next after the Lord Chief Baron, and between themselves according to the priority of their respective appointments.

The Judges of the High Court of Justice, who are not also Judges of the Court of Appeal, shall rank next after the ordinary Judges of the Court of Appeal, and among themselves (subject to the provisions herein-after contained as to existing Judges) according to the priority of their respective appointments.

Saving of
rights and
obligations
of existing
Judges.

15. Every existing Judge who is by this Act made a Judge of the High Court of Justice or ordinary Judge of the Court of Appeal shall, as to tenure of office, rank between himself and the other existing Judges, title, patronage, and powers of appointment and dismissal, and all other privileges and disqualifications, and also as to salary and pension, save as is herein provided, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of

of the provisions of this Act, every such existing Judge shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed.

A.D. 1876.

5 No Judge, whether of the High Court of Justice or of the Court of Appeal, who was appointed before the first of January one thousand eight hundred and seventy-five shall be required, without his own consent, to act under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, or for the trial of crimes and
10 offences, unless he was so liable by usage or custom at the time of the passing of this Act; but every Judge, whether of the High Court of Justice or of the Court of Appeal, appointed after the said date shall from and after the passing of this Act be capable and bound to act in such Commission, if named therein.

15 Service as a Judge in the High Court of Justice, or as an ordinary Judge in the Court of Appeal, shall, in the case of an existing Judge, for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.
20

The provisions of this section shall not apply to the Lord Chancellor.

16. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of Justice in any Court, whose jurisdiction is trans-
25 ferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the Judges or any Judge of any of such Courts, every Judge of the said High Court, except where otherwise expressly directed by this Act, shall be capable of performing and exercising, and shall
30 be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power,
35 imposed or conferred by any statute, law, or custom, in any such case as aforesaid upon the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors,
40 in the same manner as if this Act had not passed.

Provisions for extraordinary duties of Judges of the former Courts.

From and after the time fixed for the commencement of this Act, there shall be paid to the existing Judges herein-after mentioned the following salaries; that is to say,

CLAUDE A. Salaries of certain existing Judges.

To the Master of the Rolls four thousand pounds a year.

AD 1877. Division of the Supreme Court, and of the Judges, and of the Judges of the County of Tipperary, and of the Judges of the County of Sligo, into three divisions, to be known as the

Such salaries shall be deemed of the salaries by law payable to such Judges immediately before such commencement, and such salaries shall be paid to such Judges respectively on the same days and in the same manner in every respect as their former salaries: the condition which may be attached to the existing Master of the Rolls Office, in such as should be payable to him in this Act had not passed, and the provision which may be granted to all other existing Judges, shall be two tenths of the salaries which, after the commencement of this Act, shall be payable to them respectively.

TABLE I
Salaries of
Judges

There shall be paid to Judges appointed after the commencement of this Act the following salaries, which shall in each case include any pension or gratuity the Judge may be entitled to in respect of any public office previously filled by him:

To the Lord Chief Justice five thousand pounds a year, and to the Lord Chief Justice of the Common Pleas and the Lord Chief Justice of the Exchequer each, four thousand six hundred pounds a year.

20

To each ordinary Judge of the Court of Appeal the sum of four thousand pounds a year.

To each of the seven Judges of the High Court of Justice, the sum of three thousand five hundred pounds a year.

The Chiefs of the Divisions termed in this Act the Queen's Bench, 25 Common Pleas and Exchequer Divisions, whether appointed before or after the commencement of this Act, and the other Judges of the same Divisions who were appointed before the commencement of this Act, shall not be entitled to any allowance in addition to their salaries in respect of circuit. Every other Judge of the High 30 Court of Justice, or of the Court of Appeal, whether appointed before or after the commencement of this Act, who shall actually go circuit as a Judge shall be entitled to receive in respect of such circuit one hundred and fifty pounds. This last provision shall apply, immediately on the passing of this Act, to any Judge who, 35 not being a Judge of a Common Law Court, shall be named in the commission and shall actually go circuit.

Any Judge, whether appointed before or after the passing of this Act, who shall be sent as Judge for a winter assizes or special commission shall be entitled to receive in respect thereof such additional 40 payment, not exceeding the amount allowed for a circuit, as the Lord Lieutenant shall determine; but no Judge shall receive any additional or extra payment in respect of an adjourned assizes:

Provided always, that nothing herein contained shall affect such rights to remuneration in respect of any adjourned sittings as the existing Lord Chief Justice, Chief Justice of the Common Pleas and Lord Chief Baron possessed before the passing of this Act.

- 5 No salary shall be payable to any additional Judge of the Court of Appeal, but nothing in this Act shall in any way prejudice the right of any such additional Judge to any pension to which he may be by law entitled.

- 10 Her Majesty may, by Letters Patent, grant to any Judge of the High Court of Justice other than the Lord Chancellor and also to any ordinary Judge of the Court of Appeal appointed after the commencement of this Act who has served for fifteen years as a Judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his
- 15 office, a pension, by way of annuity, to be continued during his life, of the amount following; (that is to say.)

- In the case of the ordinary Judges of the Court of Appeal, the same amount of pension which might have been granted to the Lord Justice of the Court of Appeal in Chancery in
- 20 Ireland if this Act had not passed:

In the case of the Judges of the High Court of Justice, two thirds of their respective salaries.

- The salaries, allowances, and pensions payable to the Judges of the High Court of Justice and the ordinary Judges of the Court of Appeal respectively under this Act, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators,
- 25 on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine.
- 30

PART II.

Jurisdiction and Law.

17. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say.)
- 35

- 40 (1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of

* [161.]

B 4

A.C. 1876.

C. 1876.

Having
vestments of
Justice
Judges of
High Court
of Justice,
and ordinary
Judges of
Court of
Appeal.

CLASS D.
Salaries and
pensions to
be paid.

Jurisdiction
of High
Court of
Justice.

A.D. 1876.

the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him or the Lord Chancellor in relation to the Court of Chancery as a Common Law Court, and including any jurisdiction of the Masters in Chancery :

- (2.) The Court of Queen's Bench :
- (3.) The Court of Common Pleas :
- (4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court :
- (5.) The Court of Probate :
- (6.) The Court for Matrimonial Causes and Matters :
- (7.) The Landed Estates Court, including the control and direction of the Record of Title Office of the said Court, and all powers and authorities exercised by the Judges of the said Court, or any of them, under the Record of Title Act, 1865 :
- (8.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions :

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions herein-after contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, or by any Master of the Court of Chancery, when acting as Judge or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, Masters or Master, by any statute ; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

Provided always, that nothing herein contained shall abridge or alter the jurisdiction conferred by any Act or Acts upon any Judge or Judges, Commissioner or Commissioners, of Assize.

Jurisdiction
not trans-
ferred to
High Court.

18. There shall not be transferred to or vested in the High Court of Justice, by virtue of this Act,
- (1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal from the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the Court of Bankruptcy, or the High Court of Admiralty :
 - (2.) Any jurisdiction usually vested in the Lord Chancellor in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind :
 - (3.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or

other writings, to be passed under the Great Seal of Ireland: A.D. 1876.

- (4.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any College, or of any charitable or other foundation:
- (5.) Any jurisdiction of the Master of the Rolls in relation to records in Dublin or elsewhere in Ireland.

19. The Court of Appeal shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following; (that is to say,) *Jurisdiction transferred to Court of Appeal.*

- (1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court sitting as a Court of Appeal from the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the High Court of Admiralty, or the Court of Bankruptcy:
- (2.) All jurisdiction and powers of the Court of Exchequer Chamber, including its appellate jurisdiction in appeals under the Registration of Voters Acts:
- (3.) All jurisdiction and powers of the Court for Land Cases Reserved at Dublin under the provisions of the "Landlord and Tenant, Ireland, Act, 1870."

20. The Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as herein-after mentioned, of the High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such rules and orders of Court for regulating the terms and conditions on which such appeals shall be allowed as may be made pursuant to this Act. *Appeals from High Court.*

For all the purposes of and incidental to the hearing and determination of any Appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such Appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

21. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the High Court of Justice and the Court of Appeal respectively shall cease to be exercised, except by the High Court of Justice and the Court of Appeal respectively, as provided by this Act; *Transfer of pending business.*

A.D. 1876.
—

and no further or other appointment of any Judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act: Provided, that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given 5 shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by 10 the same Judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act; and every judgment, decree, rule, or order of any Court whose jurisdiction is 15 hereby transferred to the High Court of Justice or the Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the High Court of Justice and the Court of Appeal respectively, in the 20 same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the Court of Appeal; and all causes, matters, and proceedings whatsoever, whether civil or criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, 25 shall be continued as follows; (that is to say,) in the case of proceedings in Error or on Appeal, or of proceedings before the Court of Appeal in Chancery, or in the Court for Land Cases Reserved at Dublin, in and before the Court of Appeal; and, as to all other proceedings, in and before the High Court of Justice. The 30 said Courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be), down to the point at which the transfer takes place; and so far 35 as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued in and before the said Courts respectively, either in the same or the like manner as they would have been continued in the respective Courts from which they shall have been transferred as aforesaid, or 40 according to the ordinary course of the High Court of Justice and the Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

22. The jurisdiction by this Act transferred to the High Court of Justice and the Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

A.D. 1876.

Rules as to exercise of jurisdiction.

23. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:

Law and equity to be concurrently administered.

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose, properly instituted before the passing of this Act.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

A.D. 1876.

- (3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any 5 plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit, instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such 10 relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to 15 any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed 20 a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.
- (4.) The said Courts respectively, and every Judge thereof, shall recognise and take notice of all equitable estates, 25 titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein 30 before the passing of this Act.
- (5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution 35 of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from 40 directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who

would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such Order as shall be just.

- (6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been recognised and given effect to, if this Act had not passed, by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

- (7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act, in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

24. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in Ireland as to the matters next hereinafter mentioned: Be it enacted as follows:

- (1.) In the administration by the Court of the assets of any person who may die after the commencement of this Act, and

[161.]

D

*Rules of law
upon certain
points.*

*Administra-
tion of assets
of insolvent
estates.*

A.D. 1876.

Statutes of
Limitations
inapplicable
to express
trusts.Equitable
waste.

Merger.

Suits for
possession of
land by
mortgagees.

whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt in Ireland; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

- (2.) No claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations. This provision, however, is not to affect the enactments contained in the tenth section of the Real Property Limitation Act, 1874, when the same shall come into effect.
- (3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.
- (4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.
- (5.) A mortgagee entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sign and cause to be served notices to quit, determine tenancies, or accept surrenders thereof and sue for such possession, or for the recovery of such rents or profits, or to prevent or

recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person. A.D. 1876.

- 5 (6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed,) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.
- 10
- 15
- 20
- 25
- 30 (7.) Stipulations in contracts, as to time or otherwise, which would not before the commencement of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have theretofore received in equity. Stipulations not of the essence of contracts.
- 35 (8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made: and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether
- 40

A.D. 1876.

Damages by
collisions at
sea.

Infants.

Cases of
conflict not
mentioned.

the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the High Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

(10.) In questions relating to the custody and education of infants the Rules of Equity shall prevail.

(11.) Generally in all matters not herein-before particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.

PART III.

20

*Sittings and Distribution of Business.*Abolition
of terms.

25. The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any Commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to Rules of Court, the High Court of Justice, the Court of Appeal, and the Judges thereof respectively, or any such Commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or Commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

Vacation.

26. The Lord Lieutenant, by and with the advice of the Privy Council in Ireland, may, before the commencement of this Act, upon

any report or recommendation of the Judges by whose advice the Lord Lieutenant is herein-after authorised to make rules before the commencement of this Act, and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Court of Judicature herein-after mentioned, with the consent of the Lord Chancellor, from time to time make, revoke, or modify orders regulating the vacations to be observed by the High Court of Justice and the Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act; and Rules of Court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this Act had not passed.

27. Provision shall be made by Rules of Court for the hearing, in Dublin, during vacation, by Judges of the High Court of Justice and the Judges of the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard. *Sittings in vacation.*

28. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any Judge or Judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any Commissioner or Commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the High Court of Justice; and, subject to any restrictions or conditions imposed by Rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the Judge or Judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a Commissioner or Commissioners as aforesaid, or as sittings to be held in Dublin as herein-after in this Act mentioned, and such question or issue shall be tried and determined accordingly. *Jurisdiction of Judges of High Court on Circuit.*

A.D. 1876.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

Sittings for trial by jury in Dublin.

29. Subject to Rules of Court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Dublin, and 5 such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many Judges as the business to be disposed of may render necessary. Any Judge of the High Court of Justice sitting for the trial of causes and issues in Dublin, at any place heretofore accustomed, or 10 to be hereafter determined by Rules of Court, shall be deemed to constitute a Court of the High Court of Justice.

Divisions of the High Court of Justice.

30. For the more convenient despatch of business in the High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a 15 different Division from his own,) there shall be in the said High Court four Divisions consisting of such Judges respectively as herein-after mentioned. Such four Divisions shall respectively include, immediately on the commencement of this Act, the several Judges following; (that is to say,) 20

- (1) One Division shall consist of The Lord Chancellor, who shall be President thereof, The Master of the Rolls, The Vice-Chancellor and the Judges of the Landed Estates Court;
- (2) One other Division shall consist of The Lord Chief Justice, 25 who shall be President thereof, and the other Judges of the Court of Queen's Bench;
- (3) One other Division shall consist of The Lord Chief Justice of the Common Pleas, who shall be President thereof, and of the other Judges of the Court of Common Pleas, and of 30 the Judge of the Courts of Probate and for Matrimonial Causes and Matters;
- (4) One other Division shall consist of The Lord Chief Baron of the Exchequer, who shall be President thereof, and of the other Barons of the Court of Exchequer; 35

The said four Divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division.

The Queen's Bench and Common Pleas Divisions shall have each not less than four Judges; the Exchequer Division not less than 40 three.

Any vacancy at the time of the commencement of this Act in the office of Judge of any Court the jurisdiction of which is by this

Act transferred to the High Court of Justice or the Court of Appeal, if such office be continued by this Act, may be supplied by the appointment of a new Judge in his place in the same manner as if a vacancy in such office had occurred after the commencement of this Act.

A.D. 1876.

Save as by this Act expressly provided, any Judge of any of the said Divisions may be transferred by Her Majesty, under Her Royal Sign Manual, from one to another of the said Divisions, provided, that in the case of an existing Judge, such transfer shall not be without his own consent.

Upon any vacancy happening among the Judges of the said High Court, the Judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any Rules of Court which may be made pursuant thereto, become a member of the Division to which the Judge whose place has become vacant belonged, and shall succeed to the duties of such Judge.

31. The existing Judge of the Court of Probate shall continue to possess and exercise the same jurisdiction which he now possesses in the Court of Probate and of Matrimonial Causes and Matters, and in respect of all proceedings therein, and also in respect of and over the officers thereof, and shall retain all rights of patronage which before the passing of this Act were vested in him. He shall after the commencement of this Act retain the same rank relatively to the other Judges of the Common Pleas Division and of the High Court of Justice as he may previously have been entitled to. But in the Common Pleas Division he shall rank after the existing Puisne Judges. He shall not without his own consent be included in any Commission of Assize, Oyer and Terminer, and Gaol Delivery, or for the trial of crimes and offences; nor shall he without his own consent be bound to preside at trials by jury in any other than testamentary and matrimonial causes and matters. In case he shall go circuit he shall not receive any additional payment in respect thereof. Besides the duties incident to the testamentary and matrimonial jurisdiction, he shall sit in Banco with the other Judges of the Common Pleas Division upon the hearing of new trial motions and law arguments. But except as to such sittings in Banco he shall not be bound to take part in the general business of the Division nor to be one of the Judges upon the rota for Election Petitions.

Existing Judge of the Court of Probate.

All motions for a new trial, after a trial before the existing Judge and a jury in testamentary and matrimonial causes, shall be heard before the Common Pleas Division. Appeals from other orders and decisions of the existing Judge in testamentary and matrimonial proceedings shall lie to the Court of Appeal, and not to the Judges of the Common Pleas Division.

A.D. 1876.

There shall be a separate seal for the probate and matrimonial department of the Common Pleas Division, and probates and administrations issued under this seal shall have the same effect as heretofore when issued under the seal of the Court of Probate.

Provisions
as to testa-
mentary and
matrimonial
business.

32. Upon the death or resignation of the existing Judge of the Court of Probate, a successor shall be appointed, who shall be a third Puisne Judge of the Common Pleas Division, and so on from time to time there shall be three Puisne Judges of the said Division; and thenceforward from time to time as occasion shall require, Her Majesty may under Her Sign Manual designate one of the Judges of the Common Pleas Division, who, while he continues a Judge of the said Division, shall possess and exercise the jurisdiction, rights, duties, privileges, and patronage, with respect to matrimonial causes and matters, and the non-contentious business of the Court of Probate, and with respect to the officers of the said Courts respectively, and of the district registries thereof, which at the passing of this Act are possessed and exercised by the Judge of the Courts of Probate and for Matrimonial Causes and Matters. Appeals from orders and decisions of the Judge so designated shall lie to the Court of Appeal, and not to the Judges of the Division.

Rules and orders shall, upon this event occurring, be made by the Lord Chancellor and the Judges of the Common Pleas Division, or any two of such Judges, to regulate the procedure and practice in contentious testamentary business, whether before the Court or any Judge thereof, or before a jury, or in appeals ultimately to the Court of Appeal.

New provisions to take effect on the reduction of Judges in Exchequer Division to number of three.

33. As soon as under the provisions of this Act the number of Judges in the Exchequer Division shall have been reduced to three it shall be lawful for the Queen in Council, upon any report or recommendation of the Council of Judges herein-after mentioned, upon a vacancy existing in the office of one of the Judges of the Court of Bankruptcy, to order that the Court of Bankruptcy in Ireland shall be united and consolidated with the Supreme Court of Judicature in Ireland, and thereupon all jurisdiction vested in or capable of being exercised by the said Court of Bankruptcy, or any Judge or Judges thereof, shall be transferred to and vested in the High Court of Justice; and there shall be a separate seal for the Bankruptcy Department of the Exchequer Division, and all warrants, orders, proceedings, and copies, sealed with such seal, shall have the same effect as theretofore when sealed with the seal of the said Court of Bankruptcy, and the following provisions shall take effect:

(a.) The Judge who shall then fill the office of Judge of the Court of Bankruptcy shall be transferred to and become a member of the Exchequer Division. He shall, after being so transferred, continue to discharge the duties of

Judge of the Court of Bankruptcy in the same manner and with the same authority and jurisdiction as before. He shall retain all rights of patronage which the Judges of the Court of Bankruptcy previously possessed, and he shall rank relatively to the other Judges of the Exchequer Division and of the High Court of Justice according to the date of his transfer. He shall thereafter be entitled to the same salary and pension as a Puisne Judge appointed after the commencement of this Act, and shall be liable to discharge the same duties, including Commissions of Assize, Nisi Prius, Oyer and Terminer, and Gaol Delivery. After such transfer there shall be no Judge of the Court of Bankruptcy other than a Judge of the Exchequer Division.

(b.) Thenceforward there shall be four Judges of the Exchequer Division, and the entire number of Judges in the High Court of Justice shall be increased to seventeen. The fourth Judge of the Exchequer Division shall from time to time, as vacancies occur, be appointed in the same manner and receive the same salary and pension as the other Puisne Judges of the Exchequer Division; and the provisions of this Act applicable to them shall be applicable to him.

(c.) Subject as aforesaid, the office of Judge of the Court of Bankruptcy shall from time to time be filled by such one of the Judges of the Exchequer Division other than the Chief Baron as shall be assigned to hold that office by the Lord Lieutenant in Council, and such Judge shall possess and exercise all the jurisdiction, authority, and patronage now vested in any Judge or Judges of the High Court of Bankruptcy. The Judge so assigned shall hold the office of Judge in Bankruptcy in addition to the office of Judge in the Exchequer Division; provided that no existing Baron of the Court of Exchequer shall, without his own consent, be appointed Judge in Bankruptcy.

(d.) The Judge for the time being exercising the bankruptcy jurisdiction may, subject and in accordance with any Rules of Court that may for the time being be in force, delegate to the Chief Registrar or Chief Clerk in Bankruptcy, or to any other officer of the Court, such of the powers vested in him, with respect to bankruptcy proceedings, as such Judge may deem expedient so to delegate.

A.D. 1876.

(e.) Subject as aforesaid, there shall, from and after the Order in Council herein-before mentioned, be assigned to the Exchequer Division—

- (1.) All causes and matters pending in the Court of Bankruptcy at the date thereof: 5
- (2.) All causes and matters thereafter to be commenced in respect of which the Court of Bankruptcy would have had exclusive jurisdiction if this Act had not been passed.

During tenure of office by any existing Judge of the Court of Bankruptcy the powers contained in this section shall not be exercised without his consent. 10

Rules of Court to provide for distribution of business.

34. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several Divisions and Judges of the said High Court, in such manner as may from time to time be determined by any Rules of Court, or Orders of Transfer, to be made under the authority of this Act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said Divisions respectively, in the manner herein-after provided. In distributing the general business between the Queen's Bench, Common Pleas, and Exchequer Divisions, regard shall be had to any special jurisdiction vested in them respectively, so as to apportion the business fairly between them. 15 20

Assignment of certain business to particular Divisions of High Court, subject to Rules.

35. There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court: 25

- (1.) All causes and matters pending in the Court of Chancery at the commencement of this Act:
- (2.) All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any Judges or Judge thereof respectively: 30
- (3.) All matters pending in the Landed Estates Court at the commencement of this Act: 35
- (4.) All matters which would have been within the exclusive cognizance of the Landed Estates Court, or of any Judge or Judges thereof, if this Act had not passed:
- (5.) All causes and matters for any of the following purposes: 40
 - The administration of the estates of deceased persons;
 - The dissolution of partnerships or the taking of partnership or other accounts;

The redemption or foreclosure of mortgages ;
 The raising of portions, or other charges on land ;
 The sale and distribution of the proceeds of property
 subject to any lien or charge ;
 5 The execution of trusts, charitable or private ;
 The rectification, or setting aside, or cancellation of
 deeds or other written instruments ;
 The specific performance of contracts between vendors and
 purchasers of land, including contracts for leases, and
 10 also the specific performance of any other contracts
 in respect of which a Court of Equity decrees per-
 formance ;
 The partition or sale of real estates ;
 The wardship of infants and the care of infants estates.

15 All causes and matters included under the heads above num-
 bered (3) and (4) shall be assigned to the Land Judges of the
 Chancery Division.

There shall be assigned (subject as aforesaid) to the Queen's
 Bench Division of the said Court:

20 (1.) All causes and matters, civil and criminal, pending in the
 Court of Queen's Bench at the commencement of this Act:
 (2.) All causes and matters, civil and criminal, which would
 have been within the exclusive cognizance of the Court of
 Queen's Bench in the exercise of its original jurisdiction
 25 if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Common
 Pleas Division of the said Court:

(1.) All causes and matters pending in the Court of Common
 Pleas at the commencement of this Act:
 30 (2.) All causes and matters which would have been within the
 exclusive cognizance of the Court of Common Pleas if
 this Act had not passed.
 (3.) All causes and matters pending in the Court of Probate, or
 in the Court for Matrimonial Causes and Matters, at the
 35 commencement of this Act:
 (4.) All causes and matters which would have been within the
 exclusive cognizance of the Court of Probate, or of the
 Court for Matrimonial Causes and Matters, if this Act had
 not been passed.

40 There shall be assigned (subject as aforesaid) to the Exchequer
 Division of the said Court:

(1.) All causes and matters pending in the Court of Exchequer
 at the commencement of this Act:

A.D. 1876.

- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed.

Provided as to option for any Plaintiff (subject to Rules) to choose in what Division he will sue.

36. Subject to any Rules of Court, and to the provisions hereinbefore contained, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the Divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such Division, and giving notice thereof to the proper officer of the Court: Provided, that

- (1.) All interlocutory and other steps and proceedings in or before the said High Court, in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the Division of the said High Court to which such cause or matter is for the time being attached; and
- (2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any Division of the said High Court to which, according to the Rules of Court or the provisions hereinbefore contained, the same ought not to be assigned, the Court, or any Judge of such Division, upon being informed thereof, may, on a summary application, at any stage of the cause or matter, direct the same to be transferred to the Division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the Division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper Division of the said Court to which such cause or matter ought to have been assigned; and
- (3.) Every testamentary or matrimonial proceeding shall be commenced in the Common Pleas Division, and addressed to the Judge of that Division for the time being exercising testamentary and matrimonial jurisdiction:

(4.) Every proceeding in any other matter within the exclusive jurisdiction of the Landed Estates Court before the passing or under the provisions of this Act shall be commenced in the Chancery Division and addressed to the Land Judges of that Division.

A.D. 1876.

5

37. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as Rules of Court may direct, from one Division or Judge of the High Court of Justice to any other Division or Judge thereof, or may by the like authority be retained in the Division in which the same was commenced, although such may not be the proper Division to which the same cause or matter ought, in the first instance, to have been assigned.

Power of transfer.

15

38. Every application to appoint a receiver over land, when such land is the subject of a proceeding before the Land Judges, shall be made to the Land Judge to whom such proceeding is attached. In any proceeding before a Land Judge, the Judge shall decide all controversies and questions as to the validity or effect of any deed, instrument, or contract affecting land or any charge or incumbrance thereon, or as to the construction or effect of any devise or bequest of any estate or interest in or of any charge or incumbrance upon, land, which it may be necessary to decide for the purpose of such proceeding, including the validity or effect of any lease or instrument of tenancy affecting land requisite to be ascertained for the due settlement of a rental; and shall take accounts of and administer the assets of any deceased person whenever it may be necessary for a distribution of the purchase money of any land sold before him, provided there shall not be then depending before any of the Judges of the High Court a suit for the administration of such assets; and it shall not be necessary to institute any other cause or matter for any of such purposes. The procedure in such cases shall be settled by Rules of Court, to be made by the Lord Chancellor, with the Land Judges, or either of them, and any person whether already a party to the proceeding or not, who shall have been duly served with notice in writing pursuant to any Rule of Court or order of the Court shall thenceforth be deemed a party to such cause or matter with the same rights in respect of his claim or defence as if he had duly sued or been sued in a suit instituted for the purpose of deciding any such question or controversy.

Directions as to procedure in Landed Estates Court.

40

39. Subject to any arrangements which may be from time to time made by agreement between the Judges of the said High Court, the sittings for trials by jury in Dublin, and the sittings of Judges of the said High Court under Commissions of Assize,

Sittings in Dublin and on Circuit.

[161.]

E 3

A.D. 1876. Oyer and Terminer, and Gaol Delivery, shall be held by or before Judges of the Queen's Bench, Common Pleas, or Exchequer Division of the said High Court; provided that it shall be lawful for Her Majesty, if she shall think fit, to include in any such Commission any Ordinary Judge of the Court of Appeal, or any Judge of the Chancery Division appointed after the first of January one thousand eight hundred and seventy-five, or any of Her Majesty's Serjeants-at-Law, or Counsel learned in the law, who, for the purposes of such Commission, shall have all the power, authority, and jurisdiction of a Judge of the said High Court: And any person not a Judge of the High Court who shall be sent as a Commissary shall be paid in the same manner as such person would have been paid if before the passing of this Act he had been sent as a Commissary, and if he shall be sent in place of a Judge, who, under the provisions of this Act, was bound to go circuit without payment in respect thereof in addition to his salary, then one hundred and fifty pounds shall be deducted from the salary of such Judge: Provided also, that, any law or custom to the contrary, it shall not be necessary in any commission for the trial of crimes and offences in the county of the city and county of Dublin to nominate more than one Judge to preside, nor for more than one Judge to preside under any commission existing at the commencement of this Act.

Rota of
Judges for
election
petitions.

40. The Judges to be placed on the rota for the trial of election petitions for Ireland in each year, under the provisions of the "Parliamentary Elections Act, 1868," shall be selected out of the Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice in such manner as may be provided by any Rules of Court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the Judges of the said Queen's Bench, Common Pleas, and Exchequer Divisions of the said High Court, by the Judges of such Divisions respectively, as if such Divisions had been named instead of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, in such last-mentioned Act: Provided that the Judges who, at the commencement of this Act, shall be the Judges upon the rota for the trial of such petitions during the then current year shall continue upon such rota for the same period, and in the same manner as if this Act had not passed.

Persons of
one or more
Judges not
constituting
a Divisional
Court.

41. Any Judge of the High Court of Justice may, subject to any Rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in Chambers respectively, by a single

Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorised to be so heard by any Rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute
5 a Court.

A.D. 1876.

42. Such causes and matters as are not proper to be heard by a single Judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of
10 such Divisional Courts may sit at the same time. A Divisional Court of the said High Court of Justice shall be constituted by two or more of the Judges thereof. Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts. The President of every such Divisional Court
15 of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act.

Divisional
Courts of the
High Court
of Justice.

43. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all such business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the
20 said High Court, other than testamentary and matrimonial cases, as, according to the practice now existing in the Superior Courts of Common Law in Ireland, would have been proper to be transacted or disposed of by the Court sitting in Banco, if this Act had not passed, may be transacted and disposed of by Divisional Courts,
25 which shall, as far as may be found practicable and convenient, include one or more Judge or Judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every Judge of such last-mentioned Division, and also of
30 every other Judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts as may from time to time be necessary for the transaction of
35 the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorised by this Act, and also for the
40 proper transaction of that part of the business of the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively, which ought to be transacted by one or more Judges not sitting

Divisional
Courts for
business of
Queen's
Bench,
Common
Pleas, and
Exchequer
Divisions.

A.D. 1876. in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court of Justice, and in case of difference among them, in such manner as the majority of the said Judges with the concurrence of either the Lord Chancellor or the Lord Chief Justice shall determine. 5

Distribution of business among the Judges of the Chancery and Probate Divisions of the High Court.

44. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business arising out of any cause or matter assigned to the Chancery Division of the said High Court, or out of any testamentary or matrimonial cause or proceeding assigned to the Common Pleas Division, shall be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate, and the Court for Matrimonial Causes and Matters respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate, the Court for Matrimonial Causes and Matters, and the Landed Estates Court respectively, shall (subject to the power of transfer) be assigned to the same Judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which, after the commencement of this Act may be commenced in the Chancery Division of the said High Court, shall be assigned to one of the Judges thereof, in the same manner as heretofore: Provided that (subject to any Rules of Court, and to the power of transfer) all causes and matters which, if this Act had not passed, would have been within the exclusive cognizance of the Court of Probate or the Court for Matrimonial Causes and Matters, shall be assigned to the Judge of the Common Pleas Division for the time being exercising testamentary and matrimonial jurisdiction, and all matters within the exclusive jurisdiction of the Landed Estates Court shall be assigned to the Land Judges. 10 15 20 25 30

Cases and points may be reserved for or directed to be argued before Divisional Courts or Courts of Appeal.

45. Subject to any Rules of Court, any Judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or of the Court of Appeal, or may direct any case, or point in a case, to be argued before any such Court: and any such Court shall have power to hear and determine any such case or point so reserved or so directed to be argued: 35

Provided that nothing in this Act, or in any rule made under its provisions, shall take away or prejudice the right of any party to 40

any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law and as to the evidence applicable to such issues: Provided also, that
 5 such right may be enforced by motion in the High Court of Justice, or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

A.D. 1876.

46. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices
 10 of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter seventy-eight, intituled "An Act for the
 " further amendment of the administration of the Criminal Law," or any Act amending the same, shall and may be exercised after the
 15 commencement of this Act by the Judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such Chiefs at least, shall be part. The determination of any such question by the
 20 Judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said Judges
 25 under the said Act of the eleventh and twelfth years of Her Majesty's reign.

Provision for Crown cases reserved.

47. In proceedings, other than testamentary or matrimonial, in the Queen's Bench, Common Pleas, and Exchequer Divisions respectively, every motion for a new trial of any cause or matter
 30 on which a verdict has been found by a jury, or by a Judge without a jury, and every motion in arrest of judgment, or to enter judgment non obstante veredicto, or to enter a verdict for plaintiff or defendant, or to enter a nonsuit, or to reduce damages, shall be heard before a Divisional Court; and no appeal shall lie from
 35 any judgment founded upon and applying any verdict unless a motion has been made or other proceeding taken before a Divisional Court to set aside or reverse such verdict, or the judgment, if any, founded thereon, in which case an appeal shall lie to the Court of Appeal from the decision of the Divisional Court upon
 40 such motion or other proceeding.

Motions for new trials to be heard by Divisional Courts.

48. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, being costs

What orders shall not be subject to appeal.

[161.]

F

A.D. 1876.

—

which by law are left to the discretion of the Court, shall be subject to any appeal, unless by leave of the Court or Judge making such order.

As to dis-
charging
orders made
in Chambers.

49. Every order made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as to costs, may be set aside or discharged upon notice by any Divisional Court, or by the Judge sitting in Court, according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the Judge by whom such order was made, or of the Court of Appeal.

Provision for
absence or
vacancy in
the office of
a Judge.

50. In case in the Chancery Division of the High Court of Justice from the amount of business, or in any Division of the said Court from the absence of a Judge or Judges through illness, it shall be found expedient that some or one of the Ordinary Judges of the Court of Appeal appointed after the passing of this Act should assist in transacting the business of such Division, it shall be lawful for them and him so to do; and while so sitting and acting such Judge or Judges shall have all the power, jurisdiction, and authority of a Judge or Judges of the said High Court of Justice.

Power of a
single Judge
in Court of
Appeal.

51. Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three Judges of the said Court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two Judges of the said Court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Any direction incidental to a proceeding in appeal, not involving the hearing of such decrees, judgments, or orders, final or interlocutory, as aforesaid, may be given by a single Judge of the Court of Appeal and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal.

Constitution
of Court of
Appeal when

52. No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made in a

cause or matter heard by himself either sitting alone or with other Judges.

A.D. 1878.

hearing Appeals.

Arrangements for business of Court of Appeal.

53. All such arrangements as may be necessary or proper for the transaction of the business from time to time pending before the Court of Appeal shall be made by and under the direction of the President and the other Judges of the said Court of Appeal.

PART IV.

Trial and Procedure.

54. Subject to any Rules of Court and to such right as may now exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred by the Court or by any Divisional Court or Judge before whom such cause or matter may be pending, for inquiry and report to any special Referee appointed by such Court or Judge, and the report of any such Referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. The High Court or the Court of Appeal may also, in any such cause or matter as aforesaid in which it may think expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special Referees or assessors shall be determined by the Court.

Referees and assessors

55. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a Judge, conveniently be made before a jury, or conducted by the Court through its other ordinary officers, the Court or a Judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before a special Referee to be agreed on between the parties, or in default of agreement to be appointed by the Court or Judge. All such trials before Referees shall be

Power to direct trials before Referees.

A.D. 1876. conducted in such manner as may be prescribed by Rules of Court, and subject thereto in such manner as the Court or Judge ordering the same shall direct.

Power of
Referees and
effect of their
findings.

56. In all cases of any reference to or trial by Referees under this Act the Referees shall be deemed to be officers of the Court, 5 and shall have such authority for the purpose of such reference or trial as shall be prescribed by Rules of Court or (subject to such Rules) by the Court or Judge ordering such reference or trial; and the report of any Referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the 10 verdict of a jury.

Powers of
Court with
respect to
proceedings
before
Referees.

57. With respect to all such proceedings before Referees and their Reports, the Court or such Judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction is hereby transferred to the 15 said High Court, with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Amendment Act (Ireland), 1856.

Lord Lieu-
tenant may
establish
District
Registries
in the
country.

58. It shall be lawful for the Lord Lieutenant, by Order in Council, upon the recommendation of the Council of Judges, 20 herein-after mentioned, from time to time to direct that there shall be District Registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings 25 may be taken and recorded as are herein-after mentioned; and the Lord Lieutenant may thereby appoint that the Clerk of the Peace, or any person who, having been a District Registrar of the Court of Probate, shall under this Act become and be a District Registrar of the said High Court of Justice, or who shall hereafter be appointed 30 such District Registrar, shall and may be a District Registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are herein-after mentioned.

Seals of
District
Registries.

59. In every such District Registry such seal shall be used as 35 the Lord Chancellor shall from time to time direct, which seal shall be impressed on every writ and other document issued out of or filed in such District Registry, and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such District Registry, shall in all parts of the 40

United Kingdom be received in evidence without further proof thereof. A.D. 1876.

60. All such District Registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by Rules of Court, or by any special order of the Court. Powers of District Registrars.

61. Subject to the Rules of Court in force for the time being, writs of summons for the commencement of actions in the High Court of Justice shall be issued by the District Registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any Judge thereof, all such further proceedings as may and ought to be taken by the respective parties to such action in the said High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the District Registrar, and recorded in the District Registry, in such manner as may be prescribed by Rules of Court; and all such other proceedings in any such action as may be prescribed by Rules of Court shall be taken and if necessary may be recorded in the same District Registry. Proceedings to be taken in District Registry.

62. Any party to an action in which a writ of summons shall have been issued from any such District Registry shall be at liberty at any time to apply, in such manner as shall be prescribed by rules, to the said High Court or to a Judge in chambers of the Division of the said High Court to which the action may be assigned, to remove the proceedings from such District Registry into the proper Office of the said High Court; and the Court or Judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the District Registrar to the proper Office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper Office in Dublin; or the Court or Judge, if it be thought right, may thereupon direct that the proceedings may continue to be taken in such District Registry. Power for Court to remove proceedings from District Registrars.

63. It shall be lawful for the Court, or any Judge of the Division to which any cause or matter pending in the High Court of Justice

[161.]

F 3

Accounts and inquiries may be

A.D. 1876.

referred to
District
Registrars.

is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such District Registrar as aforesaid; and in any such case the District Registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any District Registrar, the report in writing of such District Registrar as to the result of such accounts or inquiries may be acted upon by the Court, as to the Court shall seem fit.

10

53 & 54 Vict.
c. 109, ss. 5
and 6 to
extend to
actions in
High Court.

64. The provisions contained in the fifth and sixth sections of the Common Law Procedure Amendment Act, Ireland, 1870, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a Civil Bill Court.

15

Provision as
to making of
Rules of
Court before
or after the
commencement
of the
Act

65. The Lord Lieutenant may at any time after the passing and before the commencement of this Act, by Order in Council, made upon the recommendation of the Lord Chancellor, the Lord Justice of Appeal, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any three of them, and of the other Judges of the several Courts intended to be united and consolidated by this Act, or of a majority of such Judges, make rules, to be styled Rules of Court, for carrying this Act into effect, and in particular for all or any of the following matters; that is to say,

- (1.) For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers; and
- (2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal, including all matters connected with writs, forms of actions, parties to actions, evidence, and mode and place of trial; and
- (3.) Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein (including the costs to be allowed to solicitors of the Supreme Court in respect of business transacted in or before any of such Courts or the offices thereof,) or relating to the conduct of civil or criminal business coming within the cognizance of the said Courts respectively, for which provision is not expressly made by this Act; and

40

(4.) For prescribing, regulating, or doing anything which under this Act may be prescribed, regulated, or done by Rules of Court.

From and after the commencement of this Act, the Lord Lieutenant may at any time, with the concurrence of a majority of the
 5 Judges of the Supreme Court present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), by Order in Council alter and amend any Rules of Court for the time being in force, and have and exercise the same power of making
 10 Rules of Court as is by this section vested in the Lord Lieutenant on the recommendation of the Judges herein-before specified before the commencement of this Act.

The Lord Lieutenant, with the like concurrence of the said Judges, or of such majority of them as aforesaid, may also, after the commencement of this Act, by Order in Council, if it shall
 15 seem expedient, rearrange the circuits or reduce their number, and direct what counties and towns shall be upon each circuit, and may, with like concurrence, direct winter assizes for civil and criminal business to be holden at places where they may be required.

20 All Rules of Court made in pursuance of this section shall be laid before each House of Parliament within such time and shall be subject to be annulled in such manner as is in this Act provided.

All Rules of Court made in pursuance of this section, if made before the commencement of this Act, shall from and after the
 25 commencement of this Act, and if made after the commencement of this Act, shall from and after the time when they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section.

The powers to make Rules of Court contained in this section
 30 are not to affect special provisions in this Act enabling rules to be made in particular instances.

66. All Rules and Orders of Court which shall be in force in the Court of Probate, and the Court for Matrimonial Causes and Matters respectively, at the time of the commencement of this Act, except
 35 so far as they shall by Rules of Court be expressly varied, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively in the same manner in all respects as if they had been Rules of Court under this Act.

67. Subject to any Rules of Court to be made under and by
 40 virtue of this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice, including the practice and procedure with respect to Crown Cases Reserved,
 [161.] F 4

Rules of
 Courts of
 Probate,
 and for
 Matrimonial
 Causes,
 to be Rules
 of the High
 Court.

Criminal
 procedure,
 subject to
 future Rules,
 to remain
 unaltered.

A.D. 1876.

shall be the same as the practice and procedure in similar cases and matters before the passing of this Act.

In cases on the Crown side of the Queen's Bench Division a writ of error to the House of Lords may issue in like manner and subject to like conditions and permission and in respect of like proceedings as such writ would have issued from the Court of Queen's Bench, if this Act had not been passed.

Act not to affect rules of evidence.

68. Nothing in this Act, or in any Rules of Court to be made by virtue hereof, save so far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to juriesmen or juries.

Saving of existing procedure of Courts when not inconsistent with this Act or Rules.

69. Save as by this Act, or by any Rules of Court may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is hereby transferred to the said High Court, and to the said Court of Appeal, respectively, under or by virtue of any law, custom, General Orders, or Rules whatsoever, and which are not inconsistent with this Act or any Rules of Court, may continue to be used and practised in the said High Court of Justice, and the said Court of Appeal, respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if this Act had not passed.

Additional power as to regulation of practice and procedure by Rules of Court.

70. Where any provisions in respect of the practice or procedure of any courts, the jurisdiction of which is transferred by this Act to the High Court of Justice or the Court of Appeal are contained in any Act of Parliament, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

Orders and Rules to be laid before Parliament, and may be annulled on address from either House.

71. Every General Rule, Order in Council, Rule of Court, and General Order required by this Act to be laid before each House of Parliament, shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament, within

the next subsequent forty days on which the said House shall have sat, praying that any such Rule or Order may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the Rule or Order so annulled shall thereupon become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

A.D. 1876.

72. A Council of the Judges of the Court of Judicature, of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice, for the purpose of considering the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the High Court of Justice or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court or any Judge thereof, or to the Court of Appeal: And they shall report annually to the Chief Secretary to the Lord Lieutenant of Ireland what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of justice. An Extraordinary Council of the said Judges may also at any time be convened by the Lord Chancellor.

Councils of Judges to consider procedure and administration of justice.

73. All Acts of Parliament relating to the several Courts and Judges, whose jurisdiction is hereby transferred to the High Court of Justice and the Court of Appeal respectively, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the High Court of Justice or the Court of Appeal, and the Judges thereof, respectively, as the case may be, had been named therein instead of such Courts or Judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the Judge or any Judges, or of any number of the Judges, of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised

Acts of Parliament relating to Courts to be read as applying to Courts under this Act.

A.D. 1876. by and with the concurrence, advice, or consent of the same or a like number of Judges of the High Court of Justice: Provided always, that any provisions of such Acts inconsistent with the provisions of this Act shall be and the same are hereby repealed.

PART V.

5

Officers and Offices.

Transfer of
existing
staff of
officers to
Court of
Judicature.

74. The Receiver Master in Chancery, and the Masters in the Courts of Common Law, the Clerk of the Crown and Hanaper, the Clerk of the Crown of the Court of Queen's Bench, and all Taxing Masters, Secretaries, Registrars, Clerk of Records and Writs, Examiner in the Court of Chancery, Registrar of the consolidated Nisi Prius Court, Clerks of the Rules and Pleadings and Record Assistants, Chief and other Clerks, Commissioners to take oaths or affidavits, or the acknowledgment of deeds by married women, Stamp Distributors, Messengers, Court and Office Keepers, Hall Porters, Tipstaves, Criers, and other officers and assistants at the time of the commencement of this Act attached to any Court or Judge whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, and also all Registrars, Clerks, officers, and other persons at the time of the commencement of this Act engaged in the preparation of commissions or writs, or in the registration of judgments or any other ministerial duties in aid of or connected with any Court, the jurisdiction of which is hereby transferred to the said Courts respectively, also all persons who were officers of or connected with the late Masters of the Court of Chancery, or their offices, shall, from and after the commencement of this Act, be attached to the Supreme Court of Judicature consisting of the High Court of Justice and the Court of Appeal.

The officers so attached shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed; any such officer who is removable by the Court to which he is now attached shall be removable by the Court or Division to which he shall be attached under this Act, or by the majority of the Judges thereof, for the same causes as heretofore.

Provided, however, that the existing Third Assistant in the Writ and Seal Office and the existing Clerk of Errors shall not be entitled to the benefit of this provision, and shall cease to be officers of the High Court upon an order of the Lord Chancellor to that effect without being entitled to compensation.

A.D. 1876.

The existing Registrars, Assistant Registrars, and Clerks to the Registrars in the Chancery Registrars office, and also the existing officers of the three law courts, shall, so long as they continue officers of the Courts, retain any right of succession secured to them by Act of Parliament, so as to entitle those who are thus secured in their respective offices, or in any substituted offices, to the succession to appointments with similar or analogous duties and with equivalent salaries.

All officers who at the time of the commencement of this Act shall be attached to the Court of Chancery, or any Judge or Master thereof, shall be attached to the Chancery Division of the High Court of Justice; all officers who at the time of the commencement of this Act shall be attached to the Landed Estates Court, or the Judges thereof, shall be attached to the Land Judges of the Chancery Division; all officers who at the time of the commencement of this Act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Exchequer shall be attached to the Exchequer Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Probate and the Court for Matrimonial Causes and Matters shall be attached to the Probate and Matrimonial Department of the Common Pleas Division of the said High Court.

All clerks and other officers attached to any existing Judges who under the provisions of this Act shall become a Judge of the High Court of Justice or of the Court of Appeal shall continue attached to such Judge, and shall perform the same duties as those which they have hitherto performed, or duties analogous thereto, and shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed.

The distribution of business among the officers so attached to the said respective Divisions, the duties to be discharged by them, and any re-arrangement connected therewith shall, with the concurrence of the Treasury be regulated, controlled, and directed, in the case of the Chancery Division as to the Landed Estates Court officers by the Lord Chancellor with the concurrence of the Land Judges, or one of them, and as to all other officers of the said Chancery Division by the Lord Chancellor, the Master of the Rolls, and the Vice Chancellor,

A.D. 1876.

or any two of them, of whom the Lord Chancellor shall be one; in the case of the officers of the Courts of Probate and for Matrimonial Causes and Matters by the Lord Chancellor and the Judge of the Court of Probate; and in the case of the officers of the Queen's Bench, Common Pleas (other than those from the Probate and Matrimonial Courts), and Exchequer Divisions respectively, by the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one.

If the services of any existing officer attached in manner aforesaid to a Division shall not be required in the Division to which he is attached, it shall be lawful for the Lord Chancellor, with the concurrence of the other Presidents of Divisions, or one of them, by order, to transfer such officer to some other office of the High Court of Justice, or some Division thereof, subject however to the conditions herein-after imposed as to the nature of the duties he is to perform.

The following offices shall at dates to be fixed by the Lord Chancellor, with the concurrence of the Treasury, but within two years from the commencement of this Act, be consolidated in manner following: the Taxing Officers of the Common Law Courts and of the Landed Estates Court with the Taxing Office of the Court of Chancery, so as to have but one Taxing Office for the Supreme Court, and the several Courts and Divisions thereof; the Office of Accountant in the Landed Estates Court with the Office of Accountant-General in the Court of Chancery, so as to have but one accounting department for the Supreme Court and all courts and divisions thereof; the Writ and Seal Office of the Law Courts with the Record and Writ Office in Chancery, so as to have but one office out of which all writs and summonses to commence proceedings in the High Court or any Division thereof may issue, and in which the records of all proceedings therein may be preserved; and the Notice Office of the Landed Estate Court with the Notice Office of the Court of Chancery.

Subject to the provisions in this Act as to tenure and salary of existing officers, and as to the discharge by them of analogous duties only, the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one, with the concurrence of the Treasury, may, by order, consolidate any other offices of the courts whose jurisdiction is hereby transferred to the Supreme Court in any cases where the union of the existing courts into one Supreme Court shall render it no longer necessary or expedient to retain such offices separate.

The distribution of business in the offices so united and consolidated, and the duties to be discharged by the officers thereof, shall, with the concurrence of the Treasury, be regulated and directed by the orders and under the control of the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one.

All other officers and persons (if any) hereby attached to the Supreme Court, for the regulation of whose duties provision has not been herein-before made, shall have their duties defined by the Lord Chancellor.

An existing officer hereby attached to the Supreme Court or any Court or Division thereof shall not be required to discharge any duties which are not either the same as or similar or analogous to those which he performed immediately before the commencement of this Act; and in case of question as to the duties proposed to be imposed upon an officer being similar or analogous, the Lord Chancellor shall decide, having regard to the rank and position previously held by such officer.

The Lord Chancellor may, with the consent of the Treasury, increase the salary of any officer who is by this Act attached to the Supreme Court, or any Court, Division, or Judge thereof, and whose duties are increased by reason of the passing of this Act.

In case it shall appear to the Lord Chancellor that, by reason of the consolidation or abolition of offices under the provisions of this Act, the continuance of the services of any officer holding during good behaviour, or during good behaviour subject to removal for cause by some Court or Judge, is unnecessary, the Lord Chancellor may, with the concurrence of the Treasury, make arrangements for the release of such officer from his duties, and thereupon it shall be in the power of the Treasury to award to such officer such compensation as, having regard to his period of service, to the tenure of the office held by him, or to any rights of succession to a position of higher rank and emolument in his office, which may have been conferred upon him by statute, the Treasury shall consider just and reasonable. Provided always, that the sum so to be awarded shall not exceed three fourth parts of the salary and emoluments of the office held by such person, nor be less than one half, nor, when the length of service exceeds fifteen years, be more than one thirtieth part of such salary and emoluments in respect of each year of completed service in an office possessing the statutable privileges above referred to: Provided also, that no such officer appointed before the passing of this Act shall be so released without his consent.

In every case in which the compensation awarded under such special circumstances, affecting the tenure or position of an officer

A.D. 1876. as are about referred to, shall exceed the amount which might be awarded under the provisions of the seventh section of the Superannuation Act, 1839 without a special minute being laid before Parliament, the compensation shall be awarded by special minute of the Treasury, stating the reasons for it, and a copy of the minute shall be laid before Parliament within fourteen days of the date of the minute if Parliament be then sitting, or if not, then within fourteen days of its next meeting.

Any existing officer attached to any existing Court or Judge whose jurisdiction is abolished or transferred by this Act, who is paid out of fees and whose emoluments or statutory rights of promotion or succession are affected by the passing of this Act, shall be entitled to prefer a claim to the Treasury; and the Treasury, if it shall consider his claim to be established, shall have power to award to him such sum, either by way of compensation, or as an addition to his salary, as it thinks just, having regard to the tenure of office by such officer and to the other circumstances of the case.

Appointment
of future
officers of
Supreme
Court.

75. Subject to the provisions in this Act contained as to existing officers of the courts whose jurisdiction is hereby transferred to the Supreme Court, the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one, with the concurrence of the Treasury, shall within two years from the commencement of the Act, determine what officers, clerks, or other persons holding subordinate positions, requisite for the permanent organisation of the official staff of the Supreme Court, and every court and division thereof, shall be retained or employed; and may, with the like concurrence, abolish any unnecessary office, or reduce, or in case of additional duties increase, the salary of an officer, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing Judge.

When a vacancy occurs in any office after the passing of this Act, an appointment shall not be made thereto for the period of one month without the assent of the Lord Chancellor given with the concurrence of the Treasury; and further the Lord Chancellor may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of January one thousand eight hundred and seventy-eight, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office.

Subject to the provisions of this Act preserving their patronage to existing Judges, all offices which may not be abolished in manner aforesaid shall continue, and shall when vacant be filled up in manner following:

All officers attached to the High Court, or the Chancery Division thereof, who have been heretofore appointed by the Master of the Rolls or Vice-Chancellor, shall continue, while so attached, to be appointed by the Master of the Rolls and Vice-Chancellor and their successors respectively in the same manner and on the same conditions and occasions as heretofore.

All officers of the Chancery Division attached to the Land Judges, heretofore appointed by such Judges, or who under the provisions of this Act shall be attached to the Land Judges, shall be appointed by them with such approval as heretofore.

All other officers attached to the Divisions of the High Court shall be appointed for each such Division by the President thereof.

All officers attached to any Judge shall be appointed by the Judge to whom they are attached.

Subject to these provisions, all officers assigned to perform duties with respect to the Supreme Court of Judicature generally, or attached to the High Court of Justice generally, or the Court of Appeal, and all Commissioners to take oaths or affidavits in the Supreme Court, or for whose appointment other provision is not expressly made in this section, shall be appointed by the Lord Chancellor.

Any statutable power existing at the passing of this Act to enable any officer or officers of any court to appoint to any office, or to employ any persons in duties appertaining to any office, is hereby repealed, and the right of appointing to such offices, if they shall be continued, shall vest, in the case of offices attached to Divisions, in the Presidents of the Divisions, and in all other cases in the Lord Chancellor, but no vacancy in any of such offices shall be filled without the concurrence of the Treasury.

Any qualification required for appointment to any office by any statute in force at the commencement of this Act shall continue.

Any officer of the Supreme Court of Judicature, or of the Court of Appeal, or of the High Court, or of any Division or Judge thereof (other than such officers attached to the person of a Judge as are removable by him at his pleasure) may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Supreme Court of Judicature, and of the Court of Appeal and of the High Court of Justice, over all or any of the officers attached to the said Courts, or any of them generally, may be exercised by the Lord Chancellor, and over the officers attached to any Division of the High Court by the President of

A.D. 1876,

such Division, with respect to any duties to be discharged by them respectively.

*Powers of
Commissio-
ners to
administer
oaths.*

76. Every person who at the commencement of this Act shall be authorised to administer oaths in any of the Courts whose jurisdiction is hereby transferred to the High Court of Justice shall be a Commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal.

*Receiver
Master.*

77. After the passing of this Act no successor to the existing Receiver Master shall be appointed; and it shall be lawful for the Lord Lieutenant, with the consent of the Lord Chancellor, to release the existing Receiver Master from the further discharge of his duties in the same manner, and upon the same terms, as the Lord Chancellor was empowered to release the other Masters by the Chancery (Ireland) Act, 1867; and upon the death, resignation, or release of such existing Receiver Master, the powers and duties in lunacy matters vested in and performed by the Receiver Master other than those connected with the management of land shall be exercised and performed by the Lord Chancellor, and the officers attached to him according to the course of procedure in the Chancellor's court and offices, and the powers and duties vested in and performed by such Receiver Master in reference to the management of landed estates, and the supervision and control of receivers over the same shall be exercised by the Land Judges, and all matters and business which shall be then pending in the office of such Receiver Master in reference to receivers appointed over any estate by or in pursuance of any order of the Court of Chancery, or any of the Judges or Masters thereof, or of the Lord Chancellor entrusted by the Queen's Sign Manual with jurisdiction in Lunacy, and the accounting of such receivers and the letting and management of the estates over which any such receiver shall have been appointed shall be thereupon transferred to the said Land Judges, and shall thenceforth, subject to any Rules of Court to be made by the Lord Chancellor, with the concurrence of the Land Judges or either of them, be prosecuted and conducted before such Judges or one of them in the same manner as the same would have been prosecuted or conducted before the Receiver Master if this Act had not been passed; and all matters and business, other than as aforesaid and other than the audit of public accounts, which shall be then pending in the office of such Receiver Master, shall, subject to Rules of Court and to the power of transfer, be distributed among the Judges of the Chancery Division of the said High

Court as the Lord Chancellor, with the concurrence of any two of the Judges of the said Division, shall direct. A.D. 1876.

Any references to appoint receivers over land which may be made by any Judge of the High Court of Justice, including the Lord Chancellor entrusted in Lunacy as aforesaid, after the death, resignation, or release of said Receiver Master shall be made to the said Land Judges, or one of them, and the accounting of the receivers appointed either under such references or by the Land Judges themselves, or by any other Judge, and the control of such receivers, and the management of the estates over which they shall be appointed, shall be exercised by the Land Judges.

Provided always, that nothing herein contained shall prevent any Judge, or the Lord Chancellor entrusted in Lunacy as aforesaid, from himself appointing a receiver over land, or over personal estate other than land, in any case in which he shall think it expedient to do so, and in any such case the Judge may, if he shall think it expedient, and in all cases in which he shall appoint a receiver over personal estate other than land he shall, by order direct that all subsequent proceedings with regard to such receiver shall be taken in his own Court, and thereupon all such proceedings shall be taken before such Judge or his officers.

Appeals from any orders made by the said Land Judges with regard to any matters connected with Receivers or the management of land shall lie to the Court of Appeal and not to the Court or Judge by whom reference to them to appoint or take the accounts of a Receiver shall have been made, and no order so made shall require to be confirmed by such last-mentioned Court or Judge.

Subject to any Rules of Court and unless the Court or Judge by whom any such reference shall be made shall otherwise order, all sums of money received by any receiver shall, after payment of or providing for the necessary outgoings of and allowances in respect of the estate over which he shall be so appointed, be lodged to the credit of the cause or matter in which the reference to the Land Judges shall have been made, or shall be paid by said Receiver according to the orders of the Judge to whom such cause or matter is attached.

Subject to Rules of Court, references to the said Land Judges shall be distributed between them as the Lord Chancellor, with the concurrence of the said Judges, or either of them, shall from time to time by any regulation direct.

The jurisdiction to audit certain public accounts, and every other jurisdiction (if any) not in reference to causes, matters, or proceedings in Chancery, now vested in the Receiver Master, shall, unless

A.D. 1875.

Parliament shall otherwise direct, after the death, resignation, or release of the existing Receiver Master, vest in and be exercised by the Land Judges.

The officers connected with the office of Receiver Master shall be transferred and attached to the Land Judges, and be employed in 5 duties similar or analogous to those which they at present discharge, and they shall hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions as if this Act had not been passed. 10

Provided also, that all the powers relating to existing officers of the courts and to the reorganization and new arrangement of offices in the seventy-eighth and seventy-ninth sections contained shall also apply to the officers of the Receiver Master.

General orders shall be made by the Lord Chancellor with the 15 concurrence of the Land Judges, or either of them, to regulate the practice and procedure connected with the matters the subject of this section.

Provided always, that no Land Judge appointed before the first of January one thousand eight hundred and seventy-five shall be bound 20 to discharge the duties imposed upon the Land Judges by this section.

The Lord Lieutenant, with the consent of the Lord Chancellor, may, if he shall think fit before the commencement of this Act, exercise the powers by this section conferred with respect to the release of the Receiver Master from the further discharge of his 25 duties, and in such case or in case of vacancy in the office before the commencement of this Act, the several provisions in this section contained shall take effect, and such of the same as relate to the Land Judges shall be applicable and shall apply to the Judges of the Landed Estates Court, and such as relate to the Judges 30 of the Chancery Division shall be applicable and shall apply to the Judges of the Court of Chancery.

CLAUSE II.
Salaries and
pensions of
officers.

There shall be paid to every salaried officer appointed in pursuance of this Act such salary out of moneys provided by Parliament as may be determined by the Treasury with the con- 35 currence of the Lord Chancellor.

An officer attached to the person of a Judge shall not be entitled to any pension or compensation in respect of his retirement from or the abolition of his office, except so far as he may be entitled thereto independently of this Act; but every other officer to be 40 hereafter appointed in pursuance of this part of this Act, and whose whole time shall be devoted to the duties of his office, shall be

deemed to be employed in the permanent Civil Service of Her Majesty, and shall be entitled, as such, to a pension or compensation in the same manner, and upon the same terms and conditions, as the other permanent civil servants of Her Majesty are entitled to pension or compensation.

A.D. 1876.

78. Clerks of Assize and Nisi Prius on circuit may be appointed and paid in the same manner as heretofore. Clerks of Nisi Prius in Dublin may be appointed by the existing Chief Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions, and shall be paid as heretofore; but such right of appointment shall not be continued to their successors, and other provisions shall be made for the discharge of the duties now discharged by such clerks, under the provisions of this Act relating to future offices of the High Court.

Clerks of
Assize and
Nisi Prius.

79. From and after the commencement of this Act, all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called Solicitors of the Court of Judicature, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed; and all persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such Courts, shall be entitled to be admitted and to be called Solicitors of the Court of Judicature and shall be admitted by the Lord Chancellor, and shall, so far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

Solicitors
and attor-
neys.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be Officers of the Court of Judicature; and that Court, and the High Court of Justice, and the Court of Appeal respectively, or any Division or Judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior courts of law or equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practise therein.

PART VI.

Jurisdiction of Inferior Courts.

80. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in Ireland, so far as the matters to which such Rules relate shall be respectively cognizable by such Courts.

Rules of law
to apply to
inferior
Courts.

A.D. 1876.

PART VII.

*Miscellaneous Provisions.*Transfer of
books and
papers to
Court of
Judicature.

81. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court of Judicature, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Court making such order.

Saving as to
circuits, &c.

82. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the Judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any Judges going circuit, or the position, salaries, or duties of any officers transferred to the Court of Judicature who are now officers of the Courts of Common Law in Ireland, and who perform duties in relation to either the civil or criminal business transacted on circuit.

Saving as to
Lord Chan-
cellor.

83. This Act, except so far as herein is expressly directed, shall not affect the office of Lord Chancellor, nor the rank, salary, or pension attached to such office; and the officers in the Lunacy Department, and the officers personally attached to or connected with the Lord Chancellor, shall continue attached to him in the same manner as if this Act had not passed; and all duties which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Court of Judicature, and by his successors. It shall be in the power of the Lord Chancellor, with the concurrence of the Treasury, to abolish, or alter the duties and designation of any officers whether in the Lunacy Department or attached to himself, and to fix the salaries of such as shall be retained, but so that no existing officer holding office during good behaviour shall receive a less salary than heretofore, or hold office otherwise than he did before.

Provisions
as to Great
Seal being in
commission.

84. When the Great Seal of Ireland is in commission, the Lords Commissioners shall represent the Lord Chancellor for the

purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being.

A.D. 1876.

PART VIII.

The Lord Chancellor, with the advice and consent of the other
 10 Presidents of the Divisions of the High Court, or any one of them, and with the concurrence of the Treasury, may, either before or after the commencement of this Act, by order, fix the fees and per-centages (including the per-centage on estates of lunatics), to be taken in the High Court of Justice or in the Court of Appeal, or any office
 15 connected therewith, or by any officer of those courts or the Lord Chancellor, or other judge of those courts which officer is paid wholly or partly out of public moneys, and in case district registries shall be established, also in the district registries, and may from time to time by order increase, reduce, or abolish all or any of such fees
 20 and per-centages, and appoint new fees and per-centages, to be taken in the said courts or offices or any of them, or by any such officer as aforesaid.

CLARENCE F.
 Fixing and
 collection of
 fees in High
 Court and
 Court of
 Appeal.

All such fees and per-centages shall (save as otherwise directed by the order) be paid into the receipt of Her Majesty's Exchequer
 25 and be carried to the Consolidated Fund, and with respect thereto the following rules shall be observed:

- (1.) The fees and per-centages shall, except so far as the order may otherwise direct, be taken by stamps, and if not taken
 30 by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.
- (2.) Such stamps shall be impressed or adhesive, as the Treasury from time to time direct.
- (3.) The Treasury, with the concurrence of the Lord Chancellor,
 35 may from time to time make such rules as may seem fit for regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of adhesive stamps and for keeping accounts of such stamps.

[161.]

I 2

A.D. 1876.

- (4.) Any document which ought to bear a stamp under this Act shall not be of any validity unless and until it is properly stamped, but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or the court may, if he or it shall think fit, order that the same be stamped as in such order may be directed, and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if such document had been properly stamped in the first instance. 10
- (5.) The Commissioners of Inland Revenue shall keep a separate account of all money received in respect of stamps under this Act, and subject to the deduction of any expenses incurred by those Commissioners in the execution of this section, the money so received shall, under the direction 15 of the Treasury, be carried to and form part of the Consolidated Fund.
- (6.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeited, or to have been previously cancelled or used, 20 shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

An order under this section may abolish any existing fees and per-centages which may be taken in the said courts or offices, or any of them, or by the said officers or any of them, but subject to the provisions of any order made in pursuance of this section, the existing fees and per-centages shall continue to be taken and accounted for in the existing manner. 30

PART IX.

Unclaimed Dividends in Bankruptcy.

CLAUDE G.
Amendment
of the Irish
Bankrupt
and Insol-
vent Act,
1857, with
respect to

From and after the passing of this Act, sections eighty-four, and two hundred and ninety-seven of the Irish Bankrupt and Insolvent Act, 1857, shall be and the same are hereby repealed, 35 and the following provisions shall thereupon be in force and have effect:

As soon as may be after the passing of this Act, the Governor and Company of the Bank of Ireland shall, upon an order of the Lord Chancellor to be made in that behalf, transfer to the account of the Commissioners for the Reduction of the National Debt at the Bank of England, all Government securities and cash standing in the books of the Bank of Ireland at the time of the passing of this Act to the credit of an account called "the Unclaimed Dividend Account," under the Irish Bankruptcy and Insolvent Act, 1857.

A.D. 1876.

the un-
claimed
dividend
account.

As soon as the said Government securities have been so transferred, the Treasury shall by warrant direct the Governor and Company of the Bank of England to cancel such securities in their books.

All unclaimed dividends and all moneys unclaimed, the produce of any bankrupt's estate, which shall from time to time after the passing of this Act be paid into, or transferred to the credit of the "Unclaimed Dividend Account," under the provisions of section 295 of the Irish Bankrupt and Insolvent Act, 1857, shall after the expiration of five years from the time at which the same have been respectively paid into, or transferred to the said account, be paid to the account of the Commissioners for the Reduction of the National Debt, in such manner as the Treasury may direct. The Commissioners for the Reduction of the National Debt shall apply all cash transferred to their account in pursuance of this section in reduction of the National Debt in the same manner as the moneys issued to them under the Sinking Fund Act, 1875.

Where any Court having jurisdiction in the matter of bankruptcy is satisfied that any person claiming is entitled to any dividend or other payment out of the moneys carried to the account of the said Commissioners under the provisions of this section, such Court may order payment of the same in like manner as it might have done if the same had not been carried to the said last-mentioned account.

All salaries, allowances, and expenses before the passing of this Act charged on and payable out of the said Unclaimed Dividend Account shall from and after the passing of this Act be paid out of moneys to be provided by Parliament for such purpose.

PART X.

Final Appeal.

85. All decisions, judgments, decrees, or orders of the Court of Appeal shall be subject to appeal to the House of Lords, in the cases and under the conditions in and under which the like decisions,

Final appeal
to the House
of Lords.

A.D. 1876.
—

decrees, judgments, or orders of the Court of Appeal in Chancery in Ireland, or of the Court of Exchequer Chamber in Ireland, would have been subject to appeal to the House of Lords or to the Queen in Council if this Act had not been passed, or as may be directed by any Act of Parliament affecting the Appellate jurisdiction 5 of the House of Lords, or any powers therein contained.

Except as herein-before provided with respect to error in certain cases on the Crown side of the Queen's Bench Division, error or appeal from any judgment, decree, or order, subsequent to the commencement of this Act, of the High Court of Justice, or any Division or Judge thereof, or of the Courts of Admiralty or Bankruptcy, or any Judge of the same respectively, may be brought only to the Court of Appeal constituted by this Act, and not directly to the House of Lords or Queen in Council, any previous law or usage to the contrary notwithstanding. 15

Nothing in this Act shall prejudice any right existing at the commencement of this Act to prosecute any pending writ of error or appeal, or to bring error or appeal to the House of Lords, or to the Queen in Council, from any prior judgment or order of any Court, whose jurisdiction is hereby transferred to the High Court of Justice or to the Court of Appeal. 20

Supreme Court of Judica-
ture (Ireland). [H.L.]

A
B I L L

INTITLED

An Act for the constitution of a Supreme Court
of Judicature, and for other purposes relating
to the better Administration of Justice, in
Ireland.

(Brought from the Lords 29 May 1876.)

*Ordered, by The House of Commons, to be Printed,
29 May 1876.*

[Bill 161]

Under 9 os.